



CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 16-C0005]

Best Buy Co., Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission

ACTION: Notice

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the Federal Register in accordance with the terms of the Consumer Product Safety Commission's regulations. Published below is a provisionally-accepted Settlement Agreement with Best Buy Co., Inc., containing a civil penalty in the amount of 3.8 million dollars (\$3,800,000) within thirty (30) days of service of the Commission's final Order accepting the Settlement Agreement.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by

[INSERT DATE 15 CALENDAR DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 16-C0005 Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814-4408.

FOR FURTHER INFORMATION CONTACT: Laura Thomson, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408; telephone (301) 504-7263.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.¹

Dated: September 30, 2016.

Todd A. Stevenson,

Secretary.

¹ The Commission voted (4-1) to provisionally accept the Settlement Agreement and Order regarding Best Buy Co., Inc. Chairman Kaye, Commissioner Adler, Commissioner Robinson and Commissioner Mohorovic voted to provisionally accept the Settlement Agreement and Order. Commissioner Buerkle voted to reject the Settlement Agreement and Order.

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In the Matter of:)	
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BEST BUY CO., INC.)	CPSC Docket No.: 16-C0005
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1. In accordance with the Consumer Product Safety Act, 15 U.S.C. §§ 2051–2089 (“CPSA”) and 16 C.F.R. § 1118.20, Best Buy Co., Inc., and its subsidiaries (collectively, “Best Buy”), and the United States Consumer Product Safety Commission (“Commission”), through its staff, hereby enter into this Settlement Agreement (“Agreement”). The Agreement and the incorporated attached Order resolve staff’s charges set forth below.

2. The Commission is an independent federal regulatory agency, established pursuant to, and responsible for, the enforcement of the CPSA, 15 U.S.C. §§ 2051–2089. By executing the Agreement, staff is acting on behalf of the Commission, pursuant to 16 C.F.R. § 1118.20(b). The Commission issues the Order under the provisions of the CPSA.

STAFF CHARGES

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16 separate recalls of consumer products, totaling approximately 600 units of recalled products (the “Recalled Products”), at its retail stores, online, and through Best Buy’s secondary market sales channels, more than 400 of which were the Canon Cameras described in paragraph 5, below.

5. The Recalled Products include:

- Toshiba Satellite Notebook Computers, recalled on September 2, 2010 (“Toshiba Notebooks”)
- iSi North America Twist ‘n Sparkle Beverage Carbonation Systems, recalled on July 5, 2012 (“Twist ‘n Sparkles”)
- LG Electronics Gas Dryers, recalled on August 2, 2012 (“LG Dryers”)GE Dishwashers, recalled on August 9, 2012 (“GE Dishwashers”)
- Canon EOS Rebel T4i Digital Cameras, recalled on August 14, 2012 (“Canon Cameras”)
- GE Profile Front Load Washer, recalled on October 3, 2012 (“GE Washers”)
- Sauder Woodworking Company Gruga Office Chairs, recalled on November 7, 2012 (“Office Chairs”)
- LG Electronics Electric Ranges, recalled on November 8, 2012 (“LG Ranges”)
- LG Electronics Top-Loading Washing Machines, recalled on December 18, 2012 (“LG Washers”)
- Samsonite Dual-Wattage Travel Converters, recalled on February 12, 2013 (“Samsonite Converters”)
- Definitive Technology SuperCube 2000 Subwoofers, recalled on March 28, 2013 (“SuperCubes”)
- Gree Dehumidifiers, recalled on September 12, 2013, expanded in January 2014 and reannounced in May 2014 (“Dehumidifiers”)
- Frigidaire Professional Blenders, recalled on September 19, 2013 (“Blenders”)
- Schneider Electric APC Surge Arrest Surge Protector, recalled on October 3, 2013 (“Surge Protectors”)
- Coby 32-inch Flat Screen TV, recalled on December 12, 2013 (“Coby TVs”), and
- Whirlpool Jenn-Air Wall Oven, recalled on July 29, 2015 (Jenn-Air Wall Ovens”).

6. Post-recall sales of the Recalled Products resulted in one reported injury. A consumer who purchased a recalled Canon Camera at a Best Buy store developed a skin irritation, which was the hazard for which the product had been recalled eight months before the purchase.

7. On September 12, 2013, Gree dehumidifiers were recalled due to a defect that caused them to overheat and catch fire. Two weeks later, Best Buy sold a Gree dehumidifier with a model number within the scope of the recall. The unit subsequently caught fire internally. Best Buy's recordkeeping did not enable it to identify whether the sold unit bore the date range identified in the recall announcement.

8. Fifteen of the 16 Recalled Products were subject to voluntary corrective action plans taken by the manufacturers in consultation with the Commission. Each of these recalls was also publicized by each respective manufacturer and by the Commission. The remaining Recalled Product was recalled by Best Buy and other retailers in consultation with the Commission because the manufacturer had ceased operations at the time of the recall; this recall was publicized by Best Buy, the other retailers, and by the Commission.

9. The Recalled Products are "consumer products," and, at all relevant times, Best Buy was a "retailer" of these consumer products, which were "distributed in commerce," as those terms are defined or used in sections 3(a)(5), (8) and (13), of the CPSA, 15 U.S.C. §§ 2052(a)(5), (8) and (13).

10. Under CPSA section 19(a)(2)(B), it is unlawful for any person to sell, offer for sale, manufacture for sale, distribute in commerce, or import into the United States, any consumer product that is subject to voluntary corrective action taken by the manufacturer, in consultation with the Commission, of which action the Commission has notified the public, or if the seller, distributor, or manufacturer knew, or should have known, of such voluntary corrective action.

11. Pursuant to section 20(a)(1) of the CPSA, 15 U.S.C. § 2069(a)(1), any person who "knowingly" violates CPSA section 19 is subject to civil penalties. Under section 20(d) of the

CPSA, 15 U.S.C. §2069(d), the term "knowingly" means: "(1) the having of actual knowledge, or (2) the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations."

12. Best Buy sold and distributed Recalled Products because Best Buy failed to implement adequate procedures to accurately identify, quarantine, and prevent the sales of the Recalled Products across all its supply channels. For example, Best Buy added an "Inactive" or "Do Not Sell" marker to the product codes of some Recalled Products to block entry of the code into the register and prevent the sale. In some cases, however, product codes were not permanently blocked based on inaccurate information that the Recalled Product had never been, or was no longer in, inventory; at other times, the blocked codes were "turned back on" prematurely, and in a few cases, overridden.

13. Best Buy communications show that, in July 2011, Best Buy secondary markets personnel reported to a manager that recalled Toshiba Notebooks were in inventory and sought guidance on protocol for handling the Recalled Product. Despite this information, immediate action was not taken to prevent future sales. The next month Best Buy sold at least five recalled Toshiba Notebooks, and approximately 15 the following month. Best Buy sold an additional 44 recalled Toshiba Notebooks over the next three years, the last sale occurring in October 2014.

14. In May 2013, staff notified Best Buy that it was conducting an investigation into the sale of the recalled Canon Cameras. Shortly thereafter, Best Buy notified staff of sales of additional Recalled Products. At staff's request, Best Buy then audited its sales records for the prior two years and reported sales of other Recalled Products.

15. Even though Best Buy advised staff of system enhancements Best Buy had implemented to reduce the risk of post-recall sales, Best Buy's sales of Recalled Products continued from June 2013 through October 2015 (including during staff's civil penalty investigation), during which time Best Buy sold approximately 35 units of Recalled Products.

16. Best Buy knew and/or should have known of these sales of Recalled Products.

17. Best Buy's sale and distribution of the Recalled Products was "knowing," as that term is defined in section 20(d) of the CPSA, 15 U.S.C. §2069(d).

18. Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, Best Buy is subject to civil penalties for its knowing sale of the Recalled Products, in violation of section 19(a)(2)(B) of the CPSA, 15 U.S.C. § 2068(a)(2)(B).

RESPONSE OF BEST BUY

19. Best Buy's settlement of this matter does not constitute an admission of the staff's charges as set forth in paragraphs 4 through 21.

20. Before any post-recall sales were identified, Best Buy had begun enhancing its procedures to help prevent the sale of recalled products. Moreover, in connection with this matter, Best Buy worked cooperatively with CPSC staff to identify additional process enhancements to further reduce the risk of such sales.

AGREEMENT OF THE PARTIES

21. Under the CPSA, the Commission has jurisdiction over the matter involving the Recalled Products described in this Agreement and over Best Buy.

22. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Best Buy, or a determination by the Commission, that Best Buy knowingly violated the CPSA.

23. In settlement of staff's charges, and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings, Best Buy shall pay a civil penalty in the amount of 3.8 million dollars (\$3,800,000) within thirty (30) calendar days after receiving service of the Commission's final Order accepting the Agreement. All payments to be made under the Agreement shall constitute debts owing to the United States and shall be made by electronic wire transfer to the United States via: <http://www.pay.gov> for allocation to and credit against the payment obligations of Best Buy under this Agreement. Failure to make such payment by the date specified in the Commission's final Order shall constitute Default.

24. All unpaid amounts, if any, due and owing under the Agreement, shall constitute a debt due and immediately owing by Best Buy to the United States, and interest shall accrue and be paid by Best Buy at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b), from the date of Default, until all amounts due have been paid in full (hereinafter "Default Payment Amount" and "Default Interest Balance"). Best Buy shall consent to a Consent Judgment in the amount of the Default Payment Amount and Default Interest Balance, and the United States, at its sole option, may collect the entire Default Payment Amount and Default Interest Balance, or exercise any other rights granted by law or in equity, including, but not limited to, referring such matters for private collection; and Best Buy agrees not to contest, and hereby waives and discharges any defenses to, any collection action undertaken by the United States or its agents or contractors pursuant to this paragraph. Best Buy shall pay the United States all reasonable costs of collection and enforcement under this paragraph, respectively, including reasonable attorney's fees and expenses.

25. After staff receives this Agreement executed on behalf of Best Buy, staff shall promptly submit the Agreement to the Commission for provisional acceptance. Promptly

following provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the *Federal Register*, in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date the Agreement is published in the *Federal Register*, in accordance with 16 C.F.R. § 1118.20(f).

26. This Agreement is conditioned upon, and subject to, the Commission's final acceptance, as set forth above, and it is subject to the provisions of 16 C.F.R. § 1118.20(h). Upon the later of: (i) Commission's final acceptance of this Agreement and service of the accepted Agreement upon Best Buy, and (ii) the date of issuance of the final Order, this Agreement shall be in full force and effect and shall be binding upon the parties.

27. Effective upon the later of: (i) the Commission's final acceptance of the Agreement and service of the accepted Agreement upon Best Buy, and (ii) and the date of issuance of the final Order, for good and valuable consideration, Best Buy hereby expressly and irrevocably waives and agrees not to assert any past, present, or future rights to the following, in connection with the matter described in this Agreement: (i) an administrative or judicial hearing; (ii) judicial review or other challenge or contest of the Commission's actions; (iii) a determination by the Commission of whether Best Buy failed to comply with the CPSA and the underlying regulations; (iv) a statement of findings of fact and conclusions of law; and (v) any claims under the Equal Access to Justice Act.

28. Best Buy represents and agrees that it has and will maintain a compliance program designed to ensure compliance with the CPSA with respect to any consumer product imported, manufactured, distributed or sold by the Firm. The compliance program does and

shall contain the following elements: written standards, policies, and procedures designed to ensure compliance with CPSA statutes and regulations; procedures to ensure that relevant information is conveyed effectively to appropriate personnel responsible for CPSA compliance; mechanisms to communicate to all applicable Best Buy employees through training programs or otherwise, company policies and procedures to prevent violations of CPSA § 19; a program for the appropriate disposition of recalled goods; management oversight of that program, including a mechanism for confidential employee reporting of compliance-related questions or concerns to either a compliance officer or to another senior manager with authority to act as necessary; senior management responsibility for, and general board oversight of, CPSA compliance; and retention of all CPSA compliance-related records for at least five (5) years; and availability of such records to staff upon reasonable request.

29. Best Buy represents and agrees that it has and will maintain and enforce a system of internal controls and procedures designed to ensure that, with respect to all consumer products manufactured, imported, distributed, or sold by Best Buy: information required to be disclosed by Best Buy to the Commission is recorded, processed, and reported in accordance with applicable law; all reporting made to the Commission is timely, truthful, complete, accurate, and in accordance with applicable law; and prompt disclosure is made to Best Buy's management of any significant deficiencies or material weaknesses in the design or operation of such internal controls that are reasonably likely to affect adversely, in any material respect, Best Buy's ability to record, process, and report to the Commission in accordance with applicable law.

30. Upon reasonable request of staff, Best Buy shall provide written documentation of its internal controls and procedures, including, but not limited to, the effective dates of the procedures and improvements thereto. Best Buy shall cooperate fully and truthfully with staff

and shall make available all non-privileged information and materials, and personnel deemed necessary by staff to evaluate Best Buy's compliance with the terms of the Agreement.

31. The parties acknowledge and agree that the Commission may publicize the terms of the Agreement and the Order.

32. Best Buy represents that the Agreement: (i) is entered into freely and voluntarily, without any degree of duress or compulsion whatsoever; (ii) has been duly authorized; and (iii) constitutes the valid and binding obligation of Best Buy, and each of its successors, transferees, and assigns, enforceable against Best Buy in accordance with the Agreement's terms. The individuals signing the Agreement on behalf of Best Buy represent and warrant that they are duly authorized by Best Buy to execute the Agreement.

33. The signatories represent that they are authorized to execute this Agreement.

34. The Agreement is governed by the laws of the United States.

35. The Agreement and the Order shall apply to, and be binding upon, Best Buy and each of its successors, transferees, and assigns, and a violation of the Agreement or Order may subject Best Buy, and each of its successors, transferees, and assigns, to appropriate legal action.

36. The Agreement and the Order constitute the complete agreement between the parties on the subject matter contained therein.

37. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. For purposes of construction, the Agreement shall be deemed to have been drafted by both of the parties and shall not, therefore, be construed against any party for that reason in any subsequent dispute.

38. The Agreement may not be waived, amended, modified, or otherwise altered, except as in accordance with the provisions of 16 C.F.R. § 1118.20(h). The Agreement may be executed in counterparts.

39. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Best Buy agree in writing that severing the provision materially affects the purpose of the Agreement and the Order.

BEST BUY CO., INC.

Dated: September 20, 2016 By: _____
Todd Hartman
Senior Vice President, Deputy General Counsel and Chief
Compliance Officer
Best Buy Co., Inc.
7601 Penn Ave. S
Richfield, MN 55423

Dated: September 22, 2016 By: _____
Eric Rubel, Esq.
Arnold & Porter LLP
601 Massachusetts Ave., NW
Washington, DC 20001-3743
Counsel for Best Buy

U.S. CONSUMER PRODUCT SAFETY
COMMISSION

Mary T. Boyle
General Counsel

Mary B. Murphy
Assistant General Counsel

Dated: September 22, 2016

By: _____

Laura Thomson

Trial Attorney

Division of Compliance

Office of the General Counsel

**UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION**

In the Matter of:

BEST BUY CO, INC.

CPSC Docket No.: 16-C0005

ORDER

Upon consideration of the Settlement Agreement entered into between Best Buy Co., Inc. (“Best Buy”), and the U.S. Consumer Product Safety Commission (“Commission”), and the Commission having jurisdiction over the subject matter and over Best Buy, and it appearing that the Settlement Agreement and the Order are in the public interest, it is:

ORDERED that the Settlement Agreement be, and is, hereby, accepted; and it is

FURTHER ORDERED that Best Buy shall comply with the terms of the Settlement Agreement and shall pay a civil penalty in the amount of 3.8 million dollars (\$3,800,000) within thirty (30) days after service of the Commission’s final Order accepting the Settlement Agreement. The payment shall be made by electronic wire transfer to the Commission via: <http://www.pay.gov>. Upon the failure of Best Buy to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Best Buy at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b). If Best Buy fails to make such payment or to comply in full with any other provision of the Settlement Agreement, such conduct will be considered a violation of the Settlement Agreement and Order.

Provisionally accepted and provisional Order issued on the 30th day of September, 2016.

BY ORDER OF THE COMMISSION:

Todd A. Stevenson, Secretary
U.S. Consumer Product Safety Commission

[FR Doc. 2016-24075 Filed: 10/4/2016 8:45 am; Publication Date: 10/5/2016]